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June 11, 1997

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William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Federal Communications Commission
Office of Secretary

Re: *Amendment of Parts 21 and 74 to Enhance the Ability of Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions — RM-9060*

Dear Mr. Caton:

I am writing on behalf of the Petitioners in the above-referenced proceeding in order to partially respond to recent filings of Hispanic Information & Telecommunications Network, Inc. ("HITN") and Instructional Telecommunications Foundation, Inc. ("ITF").^{1/} It is not the Petitioners' intent here to respond to each and every argument advanced by HITN and ITF, most of which have already been addressed in the Petitioners' own Reply Comments in this proceeding. However, it is necessary for the Petitioners to clarify certain of the proposals advanced in the Petition so as to avoid confusion that might otherwise be caused as a result of HITN and ITF misconstruing the Petitioners' proposals.

At the outset, it appears that HITN's contention that "the Petitioners' proposal unduly wrests licensee control from the hands of ITFS licensees" is based on substantial misunderstandings of the proposals contained in the Petition, particularly as they relate to the

^{1/}Although the time for filing comments in response to the Petition expired on May 14, 1997, HITN has captioned its May 29th filing as "Comments". Because HITN's "Comments" were filed on the deadline for filing reply comments, the Petitioners have not heretofore had an opportunity to respond to HITN. Similarly, captioned as "Reply Comments," ITF's filing takes issue with several proposals advanced in the Petition. Because ITF did not advance those arguments in timely filed comments, which would have afforded the Petitioners an opportunity to respond in their reply comments, this represents the first opportunity the Petitioners have to respond to ITF.

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authorization of response station facilities.^{2/} A careful review of the Petition reveals that, contrary to HITN's contentions, the proposed rules have been carefully crafted to assure that an ITFS licensee which permits the use of its channels for return paths remains the licensee of those channels.

For example, HITN simply is wrong when it asserts that under the proposed rules the commercial lessee of ITFS channel capacity could secure an authorization for response stations utilizing ITFS channels.^{3/} As contemplated by the proposed rules, the Commission will issue a response station hub authorization, which will designate certain technical specifications of the response station hub, as well as certain technical specifications of the response stations that can be operated in conjunction with that hub. Response stations themselves, however, will not be individually licensed. As is explicitly stated in the definition of the term "Response Station Hub" that the Petitioners proposed to add to Section 74.901 of the rules, a response station hub is "[a]

^{2/}HITN also harbors the mis-impression that there is only minimal demand for two-way services in the commercial and educational arenas. See HITN Comments, at 4-7. Yet, as is established in the Petition and in the numerous comments submitted by commercial and educational interests in response to the Petition, there is a significant demand for two-way services that can only be offered routinely once the proposed rules are adopted. Indeed, any doubts regarding the need for two-way wireless cable should be put to rest by the announcement earlier this week that Microsoft Corp. has agreed to invest \$1 billion in Comcast Corp., the nation's fourth largest cable company, in order "to accelerate Comcast's deployment of high-speed, two-way networks for delivering Internet programming and other data." Bank, "Microsoft Casts a Wider Communications Net," *Wall St. J.*, at B5 (June 10, 1997).

^{3/}See HITN Comments, at 9.

fixed facility *licensed to an ITFS licensee . . .*^{4/} Thus, the proposed rules are clear — only an ITFS licensee can secure an authorization for a response station hub operating on ITFS channels.

HITN's citations to proposed Sections 21.2 and 21.909 in support of its contention that "the eligibility for the authorization of these [response] stations is limited to the MDS licensee or operator, not the ITFS licensee whose signal is being retransmitted" further evidences a misconception of the licensing system specifically designed by the Petitioners to assure continued educator control over ITFS channels, for HITN ignores the relevant Part 74 rules.^{5/} It cannot be stressed enough that the Petitioners contemplate that return path use will be licensed on a channel by channel basis. For example, assume that a system is designed to utilize MDS channel H3 and adjacent ITFS channel G4 for return paths. The existing licensee of MDS channel H3 would secure an authorization for one or more MDS response station hubs pursuant to proposed Section 21.909, while the existing licensee of ITFS channel G4 would secure an authorization for one or more ITFS response station hubs pursuant to proposed Section 74.939. Thus, HITN is wrong in suggesting that ITFS channels will be used for return paths without the affected ITFS licensee holding the license.^{6/}

^{4/}Exhibit B to Petition, at 35 (emphasis added). HITN's confusion may stem from the fact that under the proposed rules, an ITFS response station hub may be "operated by [either] an ITFS licensee or the lessee of an ITFS channel for the reception of information" and an ITFS response station may be "operated by an ITFS licensee, the lessee of ITFS channel capacity or a subscriber of either . . ." *Id.* These provisions reflect the reality that, just as most ITFS transmission facilities are today actually operated by the wireless cable operator, and not the ITFS licensee, response stations and response station hubs utilizing ITFS channels will also generally be operated by parties other than the ITFS licensee. Of course, the Commission has previously acknowledged the substantial benefits of permitting wireless cable operators to actually operate facilities licensed to ITFS licensees, and permits such operation so long as the ITFS licensee generally maintains the requisite programming control. *See Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Service*, 101 F.C.C.2d 50, 89-90 (1985).

^{5/}HITN Comments, at 8-9.

^{6/}As an aside, it should be noted that the proposed rule recognize that as a practical matter, the same response station transmission and reception equipment is likely to operate on both of these adjacent 6 MHz channels licensed to different entities. Thus, the definitions of "Multipoint distribution service response station" and "Response Station Hub" proposed for Section 21.2 and of "ITFS response station" and "Response Station Hub" proposed for Section 74.901 all contemplate that response facilities can be shared among multiple MDS and/or ITFS licensees.

Similarly, HITN is off base in taking issue with the fact that under the proposed revisions to Part 21, only MDS licensees, and not ITFS licensees, are eligible for MDS response station hub authorizations. Again, the philosophy behind the Petition is that when a channel is "turned around" for return path use, it is the existing licensee that should be the licensee of the response station hub. Just as only the existing ITFS licensee can be the licensee of a response station hub operating on ITFS channels, the Petition contemplates that only the existing MDS licensee can be the licensee of a response station hub operating on MDS channels. Given this symmetry, it is difficult to comprehend HITN's concern.

While ITF is to be applauded for its support of the fundamental objectives of the Petition, ITF's reply comments evidence several unfortunate misunderstandings regarding the Petitioners' proposals. For example, ITF misconstrues the comments submitted on behalf of the Petitioners proposing rule changes that will permit the use of the existing 125 kHz channels at 2686-2690 MHz for downstream transmissions. ITF asserts that the Petitioners have proposed to make the 125 kHz channels currently associated with ITFS channels available for licensing directly to wireless cable operators.^{7/} Simply put, the Petitioners did no such thing. Rather, the Petitioners have merely requested rule changes that will allow the existing licensee of the 6 MHz ITFS channel to secure the ability to utilize the associated 125 kHz channel for point-to-multipoint transmissions.^{8/}

Similarly, ITF's contention that an ITFS licensee should be permitted to secure a stay of the automatic grant of a response station hub or booster station application "for a reasonable period of study" is based on the misplaced notion that the Petition proposes a "highly abbreviated processing" system.^{9/} In fact, the Petition is proposing that the period of time afforded for the analysis of applications be extended from 30 days to 60 days, not abbreviated. At a time when the Commission is permitting the operation of facilities in services like the Personal Communications Service, the Wireless Communications Service and the Local Multipoint Distribution Service without any application processing whatsoever, unduly delaying the granting of applications for MDS and ITFS response station hubs and booster stations is both unnecessary and inconsistent with the Commission's overall objective of expediting the initiation of service to the public. This is particularly so given the Petitioners' recent reiteration that any harmful electrical interference caused by a response station or booster station to an existing ITFS station

^{7/}See ITF Comments, at 16.

^{8/}See Petitioners' Comments, at 10 (providing as an example the method by which an A Group ITFS licensee would secure use of the 125 kHz channels associated with the A Group for point-to-multipoint use).

^{9/}See ITF Comments, at 17-18.

in excess of that interference otherwise permitted under the rules must be cured by the offending licensee.^{10/} Thus, ITF and all other licensees are fully protected from impermissible interference caused by any station erroneously licensed under the expedited system.

Finally, the Petitioners must address ITF's proposal that the Commission require all two-way digital applications and interference consents to be reviewed by legal and engineering counsel who are independent, and to have such professionals certify that the submission will not be harmful to "future instructional service."^{11/} Not only is this proposal largely unworkable — it is difficult to imagine that any lawyer or engineer would consider themselves qualified to predict the impact of an application or a consent on "future instructional service" — it is inappropriate. The Commission restricts eligibility to hold an ITFS licensee to those who either possess *bona fide* educational credentials or who have affiliated with educators. It is those educators, not lawyers or consulting engineers, who are best positioned to determine the educational needs of their community. While ITF's concern that a few ITFS licensees may lack the skills to fully evaluate system design proposals may be valid, the solution is for ITF and other experienced ITFS licensees to educate their brethren, not for the Commission to add another layer of regulation to the already highly-regulated wireless cable/ITFS relationship. As ITFS licensee Charlotte-Mecklenburg Public Broadcasting Authority ("CMPBA") put it, "the Commission should be wary of being unnecessarily 'paternalistic' when it comes to protecting the ITFS community."^{12/}

In conclusion, it is apparent that, despite the efforts by an isolated few in the ITFS community to derail this proceeding, the vast majority of wireless cable operators and educators support the prompt issuance of a notice of proposed rulemaking rather than the "go slow" approach that HITN advocates. Indeed, perhaps CMPBA said it best when it proclaimed in its reply comments that:

the Commission's guiding focus should be on expediting the Petition, and on adopting rules that facilitate flexibility and ability. An overly cautious, time-consuming and restrictive approach to adopting rules could prove costly for the ITFS community.^{13/}

^{10/}See Petitioners' Reply Comments, at 26-27.

^{11/}ITF Comments, at 17.

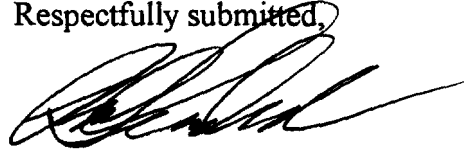
^{12/}Letter to William Caton from Harold A. Bouton, President and General Manager of CMPBA, at 2 (filed May 29, 1997).

^{13/}*Id.*

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Should you have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul J. Sinderbrand', written over the typed name.

Paul J. Sinderbrand
Counsel to the Petitioners

PJS/jmg

cc: Keith Larson
Charles Dziedzic
Michael Jacobs
John Schwartz
Benjamin Perez